

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ROBERT RAMSEY, et al.,

Plaintiffs,

Hon. Robert Holmes Bell

v.

Case No. 1:07 CV 139

PATRICIA CARUSO, et al.,

Defendants.

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**REPORT AND RECOMMENDATION**

This matter is before the Court on Defendant Abdellatif and Spitters' Motion to Dismiss Plaintiff Boulding's Complaint for Failure to Prosecute. (Dkt. #138). Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Defendant's motion be **denied**.

On December 23, 2009, Defendants filed a motion to dismiss Plaintiff Boulding's complaint for failure to state a claim on which relief may be granted. (Dkt. #133). Plaintiff Boulding has failed to respond to this motion. Defendants now request that in light of Plaintiff Boulding's failure to respond to their motion to dismiss, the Court dismiss Plaintiff's Boulding's complaint for failure to prosecute. This request flies in the face of controlling authority from the Sixth Circuit that precludes such relief. *See Bangura v. Hansen*, 434 F.3d 487, 497 (6th Cir. 2006) ("in order for a district court to dismiss a plaintiff's claims in response to a 12(b)(6) motion, the district court 'must conclude beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief, regardless of whether the plaintiff responded'") (quoting *Haines v. Kerner*, 404 U.S. 519 (1972)).

## CONCLUSION

For the reasons articulated herein, the undersigned recommends that Defendant Abdellatif and Spitters' Motion to Dismiss Plaintiff Boulding's Complaint for Failure to Prosecute, (dkt. #138), be **denied**.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: May 28, 2010

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
United States Magistrate Judge